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Docket No. 03-080-1
Regulatory Analysis and Development, PPD
Animal and Plant Health Inspection Service
Station 3C71
4700 River Road Unit 118
Riverdale, MD 20737-1238

Dear Sir or Madam:

On behalf of Agri Beef Co. an Idaho based family owned company with operations in Idaho, Washington, Nevada and Kansas, we submit the following comments on the proposed rule to reopen the US – Canada border for live and feeder cattle.

We applaud USDA/APHIS handling of the Canadian BSE situation, as well as the recent BSE situation in the U.S. To date, your efforts have done much to protect and ensure domestic and international consumers that the U.S. beef supply is safe. There is no doubt that USDA's emphasis on science (versus politics) is important in maintaining U.S. consumer confidence and in reestablishing relationships with U.S. trading partners. However, we believe USDA is proceeding too quickly in the reopening of the Canadian border (particularly in light of the Canadian source of BSE in the US) and is potentially jeopardizing the U.S. cattle and beef industry through this proposed rule for the following reasons:

1). Although USDA, in its proposed rule, emphasizes the importance of science, the fact remains that the risk of BSE adversely impacting the U.S. livestock and beef industry is greater than if the border remained closed.

In USDA's proposed rule, the following reasons have been cited:

a. Only one 6-year old animal was discovered
b. No other animals have been discovered since Canada initiated epidemiological investigations and depopulation
c. Canada banned the feeding of mammalian protein in 1997
d. Canada's surveillance of BSE and compliance with the feed ban

Although APHIS is proposing to add conditions (less than 30 months of age, restrictions on feed source, sealed trucks, designated ports of entry, group movements, removal of risk tissue, and etc.) for importing specified ruminant animals, these risk mitigation measures still do not eliminate the risk. As illustrated in the proposed rule:

a. BSE has been identified in cattle less than 30 months (EU, and possibly Italy and Japan).
b. OIE believes that for a country to meet a minimal risk requirement, a ban on feeding should be in place for 8 years (which we assume has been based on science). Canada has only had a ban in place for 6 years.

c. Canada's feed ban compliance, as described in the proposed rule, has been "good" or has shown a "high level of compliance" with some on-farm inquiries demonstrating a "small probability" of exposure, suggesting that there has not been 100% compliance.

In the past 6 years, Food & Drug Administration (FDA) has uncovered "minor violations" at more than 100 feed companies with only two being "serious" enough to require government intervention. Although the U.S. may describe this compliance as "good", it is not perfect. Even if we assume that all industry segments are in compliance to the "best of their knowledge" (as customary affidavits warrant), our experience, as the 4th largest liquid feed manufacturer in the feeding business, has shown compliance failures can exist.

Mitigating the risk of meat and bone meal contamination in our operations has been a top priority. For example, we instituted a "dedicated" trucking requirement, mandating that in-bound trucks used to haul incoming ingredients to our supplement plants are required to have never hauled or back hauled mammalian products. Although this requirement adds significant cost to our production system we feel it is the only way to be 100% in compliance with the ban. For those operations that do not insist upon these standards, we believe there is still risk that U.S. cattle could unknowingly be fed mammalian products (edible and non-edible), simply by truckers hauling mammalian products and back hauling cattle feed ingredients.

The lack of compliance to feed ban regulations is further complicated in Canada due to the make-up of country's feed industry. The Canadian feed industry on average has much older, multiple-species type feed plants than the U.S. Because of this, Canadian feed mills have an increased exposure as a source of cross-contamination for cattle feed supplies. In other words, meat and bone meal ingredients (that can be used in the poultry and swine industry) can more easily find their way into cattle feed channels despite Canada's mammalian feed ban. The Canadian feed ban may also be further compromised by the transportation industry through back hauls of mammalian products (as noted above). This is especially important to note given recent comments that suggest it might be safer to open the border to market ready (fat) cattle prior to feeder cattle. The science of the issue clearly does not support this decision, as younger feeder cattle would be less likely to be exposed to any cross-contaminated feed.

The real risk of cross-contaminated feed supplies (i.e. lack of compliance) is explicitly pointed out within the Harvard Risk Assessment (HRA). Under HRA's hypothetical scenario involving the importation of 10 infected head, HRA states that the U.S. would on average "only have three new cases" and that "the disease is virtually certain to be eliminated within 20years, assuming conditions affecting the spread of BSE remain unchanged. The new cases of BSE would come primarily from a lack of compliance with regulations enacted to protect animal feed". As a result, we question whether the feed industries in Canada and the U.S. have adopted strict enough feed handling practices to truly safeguard both industries, but especially the U.S. cattle industry in the event an infected animal is imported into the U.S. from Canada.

2). To comply with USDA's proposed rule, U.S. cattle feeding and packing operations face enormous operating challenges and higher operating costs.

USDA's proposed rule requires Canadian cattle (less than 30months) to move directly from port to slaughter (under seal) or to a designated feedlot as a group. Importers of Canadian feeder cattle destined for a U.S. designated feedlot must provide information about the ruminants, their origin, and official health certification.

This brings the following operational challenges (and or questions):

1. How will imported cattle's age be determined? It is our understanding that Canada's identification system does not record individual birth dates, which has forced Canadian slaughter facilities to mouth each animal for age (dentition). Furthermore, it is our understanding that approximately 2% of Canadian cattle that are believed to be less than 30 months of age have actually failed the dentition test. As a result, are U.S. slaughter facilities expected to implement dentition practices? And if so, are Canadian cattle that fail expected to be rendered?

2. How do importers of cattle obtain the necessary and accurate information with regards to cattle history? Are affidavits and health inspection papers sufficient to safeguard against the importation of cattle that may in fact been ("unknowingly" or knowingly) fed mammalian products? Who is expected to audit the accuracy of these certificates, the importer or some other authority? We question the ability of importers to provide such accurate information; especially given the numerous times ownership may change with any given group of cattle.

3. Assuming the imported feeder cattle are identified as less than 30 months of age at the time of importation, what assurances are there that those cattle are less than 30 months of age when slaughtered in a U.S. plant? For example, if Canadian feeder cattle are aged at something less than 30 months – let's say the typical 4 months – what happens if the cattle aren't ready for slaughter upon the 30-month deadline? They could be easily delayed because of poor feed performance, bad weather, and other unforeseen circumstances. Would they have to be aged again prior to slaughter, shipped back to Canada, rendered or depopulated?

These mitigating factors will be burdensome and costly and far from perfect. Simply obtaining, tracking, and recording the necessary information will be time-consuming and take an undeterminable amount of man-hours. None of these additional costs were included in USDA's economic impact analysis.

3). The proposed rule does not address important trade relationships, specifically Japan and South Korea. Nor does the rule address the additional costs that will be imposed by segregation if Beef Export Verification Program (BEV) remains in place.

Re-opening the border to import live and feeder cattle creates an enormous burden and places additional cost on designated feedlots and slaughter facilities as it relates to the BEV program. Assuming this program remains in existence to appease Japan and S. Korea concerns, the only solution is segregation of cattle, carcasses and boxes, which will be a very costly (similar to the burden that Mandatory Country-of-Origin Legislation, a.k.a. COOL) on feedlots and slaughter facilities.

For example:

1. Designated feedlots and slaughter facilities will need to develop a sound segregation plan that will most likely be subject to USDA/APHIS approval and oversight. This adds another level of regulation, cost, and complexity to conducting business, which is not included in USDA's economic analysis.

2. Even if BEV compliant slaughter facilities don't import Canadian live cattle, they will have to comply and certify they are not receiving Canadian-origin cattle from feedlots and adopt new BEV regulations. Again, this adds another level of regulation, cost and complexity to business, which is not included in USDA's economic analysis.

3. Since the adoption of COOL, there has been tremendous industry discussion on how best to keep imported cattle segregated from domestic cattle. The only feasible and accurate means to do this is through a National I.D. system, which is at least two years away. Otherwise, the only possible way for U.S. feedlots to keep segregation integrity would be to keep cattle in country specific pens. This in itself would make it extremely difficult for feedlots to efficiently utilize pen capacity and to effectively manage cattle health care and feed costs, costing the industry millions of dollars annually.

   With segregation under the proposed COOL rule and now under the BEV program, designated feeding facilities are forced into a higher level of segregation to keep imported Canadian cattle <u>completely</u> separate from domestic cattle. As a result we believe the only way to comply would be for feedlots to establish "Canadian regions" within each facility and construct separate hospital treatment facilities. This would also include the tracking of individual animal movements within designated feeding facilities, segregated transportation schedules and staged slaughter times – which requires a more efficient and effective communication link than current industry standards. Needless to say, we question the ability of U.S. industry to accomplish this in a feasible, accurate and cost effective manner.

There also needs to be clear consensus of the definition of "Specified Risk Materials" (SRM) among our trading partners prior to the opening of the border. It is clear from the latest Canadian BSE incident that because SRM from this particular animal never made it into the food chain, Canadian consumers quickly regained confidence in its domestic beef supply. Furthermore, Canada's efforts to more strictly define SRM and implement additional precautions to prevent SRM from entering the food chain enabled the reopening of the U.S. border to boxed beef. Therefore prior to the border opening for Canadian cattle, it seems imperative that our trading partners (Japan, Korea, Mexico, Australia and Canada) must be in agreement with U.S. and Canada on what constitutes SRM and how best to deal with it. Such a step would ensure each country fair and equitable treatment with respect to trade issues involving BSE and could conceivably negate the creation of separate cattle streams altogether.

4). Slaughter facilities will also incur additional costs in order to comply with segregation requirements under the BEV program.

These costs include additional downtime and changeover time (between processing imported Canadian cattle versus others), increased quality control and regulatory inspection, and a doubling of sku inventory requirements (for "export only" sales under the BEV program). Furthermore, these costs will definitely place smaller Northern tier single-plants, like ours, at a disadvantage compared to those in other regions.

In our own operation, we estimate the follow additional costs:

i. Minimum loss from reduced offal recoveries of $3.50 per head due to revenue loss as a result of intestine removal and disposal.
ii. Segregating carcasses will necessitate double sorting of carcasses. This will result in lost cooler and rail space and, will therefore create a need to construct a new sales cooler. The capital cost of this new cooler will be $1.4 Million with no incremental return on investment.
iii. Increased Fabrication lot changes will cost up to $4,000 per shift resulting in additional annual operating costs of up to $1.1 Million.
iv. Operational complexities make it virtually impossible to segregate rendered by-products by country of origin i.e. meat meal and tallow. Assuming that we can find a way to segregate rendered by-products, it will result in a minimum of $.5 Million for segregated storage facilities with no incremental return on investment.
v. Certain products made specifically for export markets will likely need to be downgraded to trim or inedible. We anticipate that this will result in a loss of revenue on Canadian cattle of $5.00 per head.
vi. In addition, if USDA proceeds with this rule as planned and there is no change in Asia's stance with regards to importation of Canadian-origin product (or if Asia does not allow Canadian cattle to be slaughtered in the same facility), our company stands to lose several large customers representing 20% of sales.

Furthermore, segregation requirements will put many northern tier feeding and slaughter facilities at a disadvantage to other regions of the country and will definitely place single

slaughter plant facilities at a disadvantage to multi-plant companies. Multi-plant operations have greater economies of scale to take advantage of segregation requirements by dedicating plants to be "Canadian only" or by scheduling 100% Canadian slaughter for consecutive days, thereby minimizing costs associated with carcass sorting, shift changes, and inventory requirements. Furthermore, assuming a higher cost due to segregation of Canadian originated beef from domestic beef (for BEV compliance) and a continued market prejudice from foreign countries against beef originating from Canada, the price for Canadian cattle will continue to be discount to domestic cattle. As a result, multi-plant companies, who can more easily segregate beef supplies, will be afforded a competitive advantage over single plant companies.

Thus, it is our opinion that complete product and animal segregation is at a minimum impractical, unfair and too costly and will lead to additional plant closures in the U.S., an "unintended" consequence that the industry cannot afford.

5). Additional Concerns:

a). Although the proposed rule does not suggest a "staged opening", we are adamantly opposed to the notion that fed cattle may be allowed before feeder cattle. First of all, science does not support this position. Fed cattle by definition have been fed feed ingredients and therefore are more susceptible to exposure of banned feed ingredients (as described above). If science should truly determine a staged opening then feeder cattle should be allowed for importation before fed cattle.

Secondly, allowing fed cattle to be imported before feeder cattle will put the U.S. feeding industry at a competitive disadvantage as the packing industry will leverage these additional supplies to lower fed prices and hence margins. Compounding this margin problem will be the feeding industry's inability to participate in an increase of feeder cattle supplies from Canada. This margin pressure will be felt stronger on northern tier feed yards and will result in further loss of feedyard capacity, another "unintended" consequence.

Alternatively, we would suggest that **USDA and our trading partners engage in science-based discussions that would hopefully result in recognition and agreement that feeder cattle, especially those never exposed to manufactured feed ingredients, are indeed "minimal risk"**. In doing so, feeder cattle would be deemed to be safe for export and additional regulations (like BEV or those contained in the proposed rule – i.e. segregation) would not be necessary. This would allow for a more gradual, "science-based" reopening of the border for livestock and would be less disruptive to our domestic and export markets. It would also position a later re-opening for fed cattle without trade restrictions/barriers and unnecessary regulations (like BEV or those contained in the proposed rule).

b). When USDA announced the reopening of the border for Canadian boxed beef, the industry was notified approximately 30 days prior the official reopening, which allowed sufficient time for affected participants (packers, retailers, etc.) to plan around.

Given the fact that the reopening of the border to cattle will affect thousands of producers and feed yard operators, **USDA should offer an extended window for implementation that closely corresponds with the cattle industry's standard feeding period (135-150 days).** This would enable all affected participants sufficient time to plan around and would be least disruptive to the market. Furthermore, such advance notice (135-150 days) will be less prone to uncertainty, confusion and manipulation if leaked.

Conclusion

Although we applaud USDA's leadership efforts to reopen the Canadian border, we believe it is premature. USDA's proposed rule, as written, may further jeopardize certain foreign markets, namely Japan and S. Korea, because it appears that they do not support the science contained in the rule. The BEV program and segregation will be a costly and burdensome endeavor and thus must be eliminated before reopening. Furthermore, the proposed rule, in itself, creates an unfair trade barrier with Canada and does not provide adequate safeguards to protect the U.S. cattle industry or its export markets.

Instead, we would propose that:

1. USDA take additional time and include all of our global trade partners (Canada, Mexico, Japan, S. Korea, and Australia) in the process of modifying BSE trade regulations. Our trading partners must all agree on the science: including a common definition of "Specified Risk Material", industry practices that are sufficient to declare a country as "minimal risk", and recognition that feeder cattle have less risk than fed cattle, before the U.S. unilaterally agrees to open the border to Canadian cattle. Our trading partners should also pursue any such modifications to the OIE standards jointly and in support of one another.

2. USDA work closely with Canada in persuading our global trading partners, especially Japan and S. Korea, to accept imported Canadian beef before the U.S. unilaterally agrees to open the border to Canadian cattle. In doing so, the U.S. will be able to eliminate the BEV program and reopen the border without additional costs and unnecessary requirements like segregation. Not only will this help restore confidence from a global trade standpoint, but it will also help avoid a situation where the American consumer is provided with a stream of beef from a "BSE risk country" while our trading partners are not. While scientifically sound, the perception could end up costing US producer's a portion of the domestic market.

3. USDA/FDA work more aggressively with the feed industry to develop more rigid feed ingredient and transportation regulations. The feed industry, especially multiple-species mills, must embrace whatever

changes are necessary to ensure compliance with the feed ban. If not, laws and regulations should be imposed that will ensure segregation of feed ingredients (i.e. bovine dedicated feed mills).

This is the only way for the U.S. to protect the interests of producers, trading partners and consumers without further regulation or cost upon the U.S. cattle industry and more importantly, jeopardizing our trade relationships or the health of the U.S. livestock industry.

Respectfully,

Robert Rebholtz, Jr.